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27. The article of claim 26, wherein the instructions, when executed, further result in specifying an acceptable quality of service level at which the message is to be transmitted.

28. The article of claim 26, wherein the instructions, when executed, further result in specifying an acceptable level of service level at which the message is to be transmitted.

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#### REMARKS

This response is provided in reply to an Office Action mailed **November 14, 2003** in the parent application. Claims 1-28, as originally filed, remain pending with this response. Each of the pending claims were rejected under 35 USC §103(a) in view of various combinations of references, as detailed below. With this response, the rejection of such claims is respectfully traversed for failure to provide the necessary prima facie case in support of the rejection. Accordingly, reconsideration of this application, as amended, is respectfully requested.

#### §103(a) Rejection of Claims 1-6, 11, 13, 14, 16-21 and 23-28

In **paragraphs 1-28** of the Action, claims 1-6, 11, 13, 14, 16-21 and 23-28 were rejected in view of a patent issued to Thakkar (USP 6,487,602 ) in view of a patent issued to Johnson, et al. (USP 6,556,826). In response, Applicant respectfully traverses the basis for the rejection of such claims.

With regard to claim 1, despite the characterization in the Action, the Johnson reference fails to disclose or suggest that which is claimed in rejected claim 1. In particular, claim 1 provides for transmission of content upon the occurrence of a user-defined event. In contrast, the cited passages of the Johnson reference merely describes the transmission of content in

accordance with a user profile. Applicant respectfully submits that a user-defined event is not analogous to a user profile, which may not be controlled by the user itself.

Accordingly, insofar as the combination of the Thakkar and Johnson references fail to disclose or suggest that which is claimed in rejected claim 1, Applicant respectfully requests that the §103 rejection of such claim be withdrawn.

Applicant respectfully submits that claims 13, 19 and 24 enjoy features analogous to that presented above for claim 1. Accordingly, Applicant respectfully submits that claims 13, 19 and 24 are similarly patentable over the Thakkar and Johnson references using arguments analogous to those presented above for claim 1. As such, Applicant respectfully requests that the §103(a) rejection of such claims be withdrawn.

Applicant notes that claims 2-12, 14-18, 20-23, and 25-28 depend from patentable base claims 1, 13, 19 and 24, respectively. Thus, in addition to any independent bases for patentability, such claims are likewise patentable over the cited references by virtue of at least such dependence on patentable base claims 1, 13, 19 and 24, respectively. Accordingly, Applicant respectfully requests that the §103(a) rejection of such claims be withdrawn.

In **paragraph 6** of the Action, claim 6 was rejected as being unpatentable over Thakkar in view of Johnson. In response, Applicant respectfully traverses the rejection of such claim.

In addition to the other bases for patentability provided above, claim 6 includes a feature wherein the user-defined event includes the user specifying an acceptable transmission power level at which the message is to be sent. In rejecting the claim, the Action points to two passages of Johnson which describe rate control. Applicant notes that rate control is not analogous to power control. Moreover, Applicant further notes that neither Thakkar nor Johnson describe an environment wherein the rate control, much less the transmission power level at which the message is sent, is controlled by the user of a communications device.

In this regard, Applicant respectfully asserts that neither the Thakkar nor the Johnson references, alone or in combination, disclose or suggest that which is claimed in claim 6.

Accordingly, Applicant respectfully request that the §103(a) rejection of claim 6 be withdrawn.

In **paragraph 7** of the Action, claim 7 was rejected as being unpatentable over the Thakkar and Johnson references in further view of a patent issued to Geise (US 6,621,895). In response, Applicant traverses the rejection of this claim.

In addition to the foregoing bases of patentability, claim 7 includes the feature wherein the user defined event includes specifying an acceptable security level at which the message is to be sent. In rejecting the claim, the Action acknowledges that neither the Thakkar or Johnson references fail to disclose or suggest a system wherein the user defined event includes specifying an acceptable security level. The Action cites the Geise reference as curing this deficiency. However, while the passages cited mention the word “security”, the Geise reference fails to disclose or suggest that a security level could be set as a user-defined event which triggers the transmission of a message. Rather, Geise describes that the security level is set within the infrastructure of a data network. That is, the Geise reference fails to describe a situation in which the security level is set by an end-user.

In this regard, Applicant respectfully submits that i) Geise fails to disclose or suggest a feature wherein user defined event includes specifying an acceptable security level at which the message is to be sent; and ii) an artisan reading the Geise reference would not be motivated to set a security level as a user-defined event without using the pending claim as a model. In this regard, Applicant respectfully submits that the Action is using impermissible hindsight reconstruction to “find” the elements of the rejected claims in the prior art.

Accordingly, Applicant respectfully submits that the cited references fail to disclose or suggest that which is claimed in rejected claim 7. Thus, Applicant respectfully requests that the §103(a) rejection of such claim be withdrawn.

Applicant notes that claims 15 and 22 include a user-defined feature similar to that of claim 7. Accordingly, Applicant respectfully submits that claims 15 and 22 are similarly patentable over the cited references, and that the rejection of such claims should be withdrawn.

In **paragraph 8** of the Action, claim 8 was rejected as being unpatentable over the Thakkar and Johnson references in further view of a patent issued to Edwards (USP 6,078,815) pursuant to 35 USC §103(a). In response, Applicant traverses the rejection of this claim.

In addition to other bases of patentability introduced above, claim 8 includes a feature wherein the user defined event includes specifying an acceptable distance from a base station at which the message is to be sent. In rejecting claim 8, the Action relies primarily on the Edwards reference. Applicant respectfully submits, however, that the Edwards reference fails to disclose or suggest a feature wherein a user defined event includes specifying an acceptable distance from a base station at which the message is to be sent.

Rather, Edwards merely describes a control element within the infrastructure of a cellular system (i.e., not within a handset or end-user device) that assigns different frequencies and power levels to cover handsets in various radii from a servicing base station. Again, in this regard, the Edwards reference fails to disclose or suggest that the distance from the base station being set by a user as a trigger to determine when a message is to be sent.

Applicant respectfully submits that an artisan would not be motivated after a reading of the Edwards reference to use distance from a base station as a user defined event without using the pending claim as a model. In this regard, Applicant respectfully submits that the Action is

using impermissible hindsight reconstruction to "find" the elements of the rejected claims in the prior art.

In view of the foregoing, Applicant respectfully submits that the cited references fail to disclose or suggest that which is claimed in rejected claim 8. Accordingly, Applicant respectfully requests that the §103(a) rejection of claim 8 be withdrawn.

### Conclusion

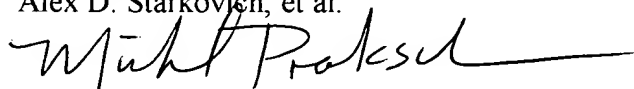
The foregoing is submitted as a full and complete response to the Office Action mailed November 14, 2003. In view of the foregoing amendments and remarks, Applicant respectfully submits that pending claims 1-28 are in condition for allowance and a notification of such allowance is respectfully requested.

Should it be determined that an additional fee is due under 37 CFR §§1.16 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #50-0221.

If the Examiner believes that there are any informalities which can be corrected by an Examiner's amendment, a telephone call to the undersigned at (503) 264-3059 is respectfully solicited.

Dated:

Respectfully submitted,  
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